

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

ALFONSO HERNANDEZ,

Plaintiff,

v.

Civ. No. 14-964 KG/SCY

ANDY FITZGERALD,

Defendant.

**ORDER REGARDING  
OBJECTIONS TO DEPOSITION DESIGNATIONS**

This matter is before the Court on Defendant's Objections To Plaintiff's Notice Of Designation Of Use Of Deposition Testimony At Trial (Doc. 258) and Plaintiff's Objections To Defendant's Designation Of Deposition Testimony (Doc. 259).<sup>1</sup> The Court held a hearing on the Objections on May 20, 2019 at 1:30 pm. Having heard from the parties, the Court issues the following rulings for the reasons stated on the record.

Designation	Designated by	Objection	Ruling
Vol. I			
5:1-6:1-7	Plaintiff	Yes	Admitted as background information.
6:8-10	Plaintiff	Yes	Excluded as personal information and not relevant.
6:11-19	Plaintiff	Yes	Admitted as background information.
6:20-9:1	Plaintiff	Yes	Excluded as not responsive.
9:2-10:6	Plaintiff & Defendant	Yes	Admitted as a joint designation. Plaintiff's withdrawal of cross-designation is overruled as untimely.
10:7-10:21	Plaintiff	Yes	Excluded because it is not testimony.
10:22-11:2	Plaintiff & Defendant	Yes	Admitted as joint designation. <sup>2</sup>

<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), the parties consented to the undersigned to conduct proceedings on "Objections to deposition designations of Michael Herrick of both parties." Doc. 255.

<sup>2</sup> Defendant made a general objection to pages 5:1 to 29:14. Doc. 258 at 1. At the hearing, Defendant clarified that the general objection does not apply to the specific portions of the transcript that he designated within those pages. *See* Doc. 256 at 1.

11:3-11:13	Plaintiff	Yes	Admitted because how Michael Herrick met Plaintiff is relevant.
11:14-22	Plaintiff & Defendant	Yes	Admitted as joint designation.
11:23-12:10	Plaintiff	Yes	Excluded.
12:11-12:13	Plaintiff	Yes	Admitted because Herrick is explaining how he got his knowledge, with cross-reference to vol II, page 104.
12:14-12:16	Plaintiff	Yes	Excluded.
12:18-20	Plaintiff & Defendant	Yes	Admitted as joint designation.
12:21-12:23	Plaintiff	Yes	Admitted as relevant to Herrick's memory and knowledge.
12:24-13:1	Plaintiff & Defendant	Yes	Admitted as joint designation.
13:2-13:10	Plaintiff	Yes	Admitted as relevant to Herrick's information and memory about the case.
13:11-13	Plaintiff & Defendant	Yes	Admitted as joint designation.
13:14-25	Plaintiff	Yes	Excluded as not relevant.
14:1-24	Plaintiff & Defendant	Yes	Admitted as joint designation.
14:25	Neither	Yes	Admitted to explain context.
15:1-2	Plaintiff	Yes	Admitted to explain context.
15:3-14	Plaintiff & Defendant	Yes	Admitted as joint designation.
15:15-24	Plaintiff	Yes	Admitted as relevant.
15:25-16:17	Plaintiff & Defendant	Yes	Admitted as joint designation.
16:18-17:11	Plaintiff	Yes	Admitted as relevant.
17:12-18:21	Plaintiff & Defendant	Yes	Admitted as joint designation.
18:22-19:10	Plaintiff	Yes	Excluded as hearsay.
19:11-16	Plaintiff	Yes	Admitted as relevant.
19:17-21:5	Plaintiff & Defendant	Yes	Admitted as joint designation.
21:6-21:8	Plaintiff	Yes	Admitted upon Defendant's withdrawal of objection.
21:9-23:5	Plaintiff & Defendant	Yes	Admitted as joint designation.
23:6-23:11	Plaintiff	Yes	Admitted as relevant to audio that will be played at trial.
23:12-24:7	Plaintiff & Defendant	Yes	Admitted as joint designation.
24:8-13	Plaintiff	Yes	Admitted as relevant.

24:24-25:11	Plaintiff	Yes	Excluded as not relevant.
25:12-26:19	Plaintiff & Defendant	Yes	Admitted as joint designation.
26:20-27:16	Plaintiff	Yes	Admitted as relevant to audio that will be played at trial.
27:17-29:14	Plaintiff & Defendant	Yes	Admitted as joint designation.
30:7-17	Plaintiff	Yes	Excluded because attached question was not designated and because while Herrick's knowledge of how Plaintiff speaks could be relevant, evidence that he is Catholic is not relevant and gives rise to concerns under FRE 610.
30:18-33:5	Plaintiff & Defendant		Admitted as joint designation.
33:6-15	Plaintiff		Admitted as relevant.
33:17-34:3	Defendant	Yes	Excluded because Herrick lacks knowledge.
34:4-34:16	Plaintiff & Defendant		Admitted as joint designation.
34:17-35:4	Plaintiff		Admitted as relevant to audio that will be played at trial.
35:5-24	Plaintiff & Defendant		Admitted as joint designation.
36:1-25	Plaintiff	Yes	Admitted as relevant to audio that will be played at trial; mentions of religion are incidental.
37:1-3	Plaintiff	Yes	Excluded as irrelevant.
37:4-5	Plaintiff	Yes	Admitted as relevant.
37:6-38:12	Plaintiff & Defendant		Admitted as joint designation.
38:13-15	Plaintiff	Yes	Excluded as irrelevant.
Vol. II			
50:1-50:10	Plaintiff		Admitted.
50:11-21	Plaintiff & Defendant		Admitted as joint designation.
50:22-52:19	Defendant	Yes	Admitted for impeachment evidence for the reasons stated on the record.
52:20-53:6	Plaintiff & Defendant		Admitted as joint designation.
53:7-54:6	Plaintiff		Admitted without objection.
54:7-55:8	Defendant	Yes	Admitted for impeachment evidence.
56:2-25	Defendant	Yes	Admitted for impeachment evidence.
58:3-58:16	Defendant	Yes	Admitted for impeachment evidence.
62:11-62:12	Plaintiff		Admitted without objection.
62:13-16	Plaintiff & Defendant		Admitted as joint designation.

62:17-63:11	Plaintiff		Admitted without objection.
63:12-17	Plaintiff & Defendant		Admitted as joint designation.
63:18-63:25	Plaintiff		Admitted without objection.
64:1-4	Plaintiff	Yes	Admitted because it gives context to prior testimony.
64:5-66:14	Plaintiff	Yes	Excluded as an out-of-court statement between counsel and Herrick.
66:15-66:22	Plaintiff		Admitted without objection.
66:23-67:4	Plaintiff & Defendant		Admitted as joint designation.
67:5-69:13	Plaintiff		Admitted without objection.
69:14-70:15	Plaintiff & Defendant		Admitted as joint designation.
70:16-70:18	Defendant	Yes	Excluded as so marginally relevant that it is not useful.
70:22-71:8	Plaintiff		Admitted without objection.
71:9-72:4	Plaintiff & Defendant		Admitted as joint designation.
72:5-14	Plaintiff		Admitted without objection.
72:15-19	Plaintiff	Yes	Admitted to provide context to the audio recording that will be played at trial.
72:20-24	Plaintiff	Yes	Excluded as irrelevant.
78:3-21	Defendant	Yes	Admitted for impeachment.
78:22-79:1	Defendant	Yes	Excluded as relating to a conviction.
79:19-80:3	Defendant	Yes	Admitted for impeachment.
82:23-83:9	Defendant	Yes	Admitted for impeachment.
83:10-20	Defendant	Yes	Excluded as relating to a conviction.
84:1-7	Defendant	Yes	Admitted for impeachment.
86:2-18	Defendant	Yes	Excluded because it's not related to APD or the City.
87:1-13	Defendant	Yes	Excluded because it's not related to APD or the City.
87:14-21	Defendant	Yes	Admitted for impeachment.
88:3-12	Defendant	Yes	Admitted for impeachment.
90:6-14	Defendant	Yes	Excluded because it's not related to APD or the City. <sup>3</sup>
99:10-24	Defendant	Yes	Excluded because it's not related to APD or the City.

<sup>3</sup> The Court previously took lines 90:6-14, 99:10-24, and 99:25-100:25 under advisement because it is unclear whether these arrests or warrants relate to the City of Albuquerque. *See* Clerk's Minutes, Doc. 262 at 6. On consideration, the Court will sustain Plaintiff's objection to these portions of the transcript and exclude them.

99:25-100:25	Defendant	Yes	Excluded because it's not related to APD or the City.
103:5-104:15	Defendant	Yes	Excluded as irrelevant and not related to APD.
104:16-105:5	Plaintiff	Yes	Admitted in connection with page 12 of volume 1.
105:6-105:25	Plaintiff & Defendant		Admitted as joint designation.
106:1-6	Defendant		Admitted without objection.
106:7-14	Defendant	Yes	Admitted for impeachment.
106:15-108:9	Defendant	Yes	By 5 pm on May 22, 2019, Defendant shall provide the Court with the specific portions of this designation that are relevant to August of 2012. Relevant sections shall be admitted as impeachment.
109:4-9	Defendant	Yes	By 5 pm on May 22, 2019, Defendant shall provide the Court with the specific portions of this designation that are relevant to August of 2012. Relevant sections shall be admitted as impeachment.
109:10-109:23	Plaintiff & Defendant		Admitted as joint designation.
109:24-115:13	Defendant	Yes	By 5 pm on May 22, 2019, Defendant shall provide the Court with the specific portions of this designation that are relevant to August of 2012. Relevant sections shall be admitted as impeachment.
115:14-116:19	Plaintiff		Admitted without objection.
116:20-117:2	Plaintiff & Defendant		Admitted as joint designation.
117:16-25	Defendant		Admitted without objection.
118:12-119:2	Defendant	Yes	Admitted for impeachment.

At the hearing on May 20, 2019, Plaintiff represented that he may not call Mr. Herrick at trial in light of the Court's rulings as set forth above. Therefore, the parties shall confer and if necessary, submit competing transcripts by 5:00 pm on Wednesday, May 22, 2019. The parties are not required to prepare the corresponding video designations. If Plaintiff advises that he will not call Mr. Herrick at trial, Defendant's counsel shall submit a transcript for review without the impeachment evidence as described above.

**IT IS SO ORDERED.**

  
UNITED STATES MAGISTRATE JUDGE